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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,271	11/16/2001	Kimberly Ann Mudar	D-43397-02	7690

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,271

Applicant(s)

MUDAR ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/19/03
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/2/02, 6/30/03, 9/17/02
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Applicants election received 11/19/2003, to the election of species requirement mailed 11/7/2003, has been received. Applicants elected species I, the slip agent with out traverse. Accordingly, the slip agent species has been examined and the surfactant species including claim 12 has been withdrawn from further consideration as being drawn to a non-elected species.

It is first noted that the examiner appreciates applicants' submission of the copies of the many references cited in the Information Disclosure statements. One of the citations cited in the IDS filed 5/7/02 is an entire book, "Handbooks of Industrial Surfactants", since the book is presumably being cited as a general treatise on surfactants, it will not be considered unless applicants can point to some particular relevancy to the recited invention. In fact, many of the large number of references cited appear to be no more than broad general background references on plastic packaging with no particular relevance to the claimed invention. Since there are so many references cited and although the examiner has scanned than for relevancy to the current application, applicants are invited to point out any specific teaching that the examiner may have over looked in any of the cited references.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 and 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luthra et al (WO 99/00250) in view of Noel et al (6,355,287).

In regard to claim 1, Luthra et al discloses a packaged product comprising a food product containing liquid and a packaging article at least partially surrounding the food product and

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liquid, the packaging article having a seal layer comprising a slip agent. Claim 1 differs from Luthra et al only in the recitation that the liquid is "added". It is not clear now the verbage "added" affects an article claims. That is, once it is in the package, the liquid is liquid and where it has come from would appear to be irrelevant. In any case, Noel et al can be relied on to teach it was conventional to provide a packaged, product wherein the food product contains liquid that is added liquid. Since Luthra et al is concerned with packaged food products that contain liquid, it would have been obvious to substitute one conventional liquid for another or one source of liquid for another. In regard to claims 2-4, the particular amount of slip agent provided is seen to have been an obvious routine determination. In regard to claims 5 and 6, the particular conventional slip agent selected is seen to have an obvious matter of choice. Luthra et al discloses that fatty amides are conventional slip agents (page 15, last paragraph). Similarly, in regard to claims 7-10, the particular conventional seal layer employed and its properties such as the melt index and density are seen to have been an obvious determination for one of ordinary skill in the art. Both Luthra et al and Noel et al teach the conventionality of ethylene/alpha olefins. In regard to claim 11, to eliminate a material such as antiblock particulates and its function if one is willing to absorb any known disadvantage therefrom is seen to have been obvious. Claims 13-18 are directed to shrink energies, film thicknesses, and conventional packaging materials such as foam sheet, and the particular variables are seen to have been routinely determinable, if indeed they are not already taught by the art taken as a whole. In regard to claims 19, 20, 21 and 22, Noel et al discloses the conventionality of packaging beef with added brine within the recited range. In regard to claim 23, the art taken as a whole teaches one or more of the recited polymers as the seal layer. In regard to claim 24, claim 24 recites a packaged food product having an added

liquid therein without reciting the slip agent but characterizing the seal layer having a certain surface energy. As disclosed, the invention is directed to a packaged wherein the seal layer includes a slip agent or a surfactant. Since Luthra et al disclose this, it is considered that Luthra et al would inherently possess any property that applicant's seal layer possesses, or otherwise, the invention is not sufficiently claimed. Note, too, the Office does not have the ability to test the thousand of patents directed to plastics and packages to check to see whether the many patent that are silent as to surface energy inherently meets this limitation.

Claim 24 is rejected under 35 USC 112, first paragraph. As noted above, the specification is directed to a seal layer including either a slip agent or surfactant. The specification is not seen to support a claim where neither of these materials are present. Surface energy is obtainable without those materials.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art.

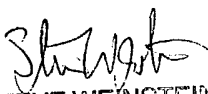
Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

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S. Weinstein/af
March 18, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/24/04